



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cassidy-Duran & Knapp

File: B-249253

Date: November 5, 1992

G. David Jewett, Esq., Thorp, Dennett, Purdy, Golden & Jewett, for the protester.
Sharon Gorham, an interested party.
William R. Burchill, Jr., Esq., Administrative Office of the United States Courts, for the agency.
David Hasfurthur, Esq., Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that proposal which offers two qualified reporters, one of which would not be available immediately upon award, did not meet solicitation requirement that firm provide two reporters to cover simultaneous proceedings immediately upon award is denied where there was no firm requirement that the awardee actually provide two reporters--the awardee was only required to be prepared to do so if necessary and awardee proposed to furnish a qualified substitute if necessary to provide the required services.

DECISION

Cassidy-Duran & Knapp protests the award of a contract to Sharon Gorham under request for proposals (RFP) No. 0979-92-02, issued by the Administrative Office of the United States Courts to obtain court reporting services in Eugene and Medford, Oregon, for the United States District Court, District of Oregon. Cassidy-Duran contends that the awardee's offer should have been rejected because for the initial 2 months of the contract the awardee simply promised to supply a second court reporter without providing the agency, as allegedly required by the solicitation, with that person's name and qualifications. Cassidy-Duran also

contends that the evaluation of the offers was defective because references submitted on behalf of the protester were ignored and the award was based solely on price.¹

We deny the protest.

The amended solicitation requested court reporting services for two presiding officials for a 3-year period (base year plus 2 option years). Offerors were asked to furnish a daily rate, a half-day rate, and an overtime rate for the services. The solicitation provided for the evaluation of offers on the basis of (1) price, (2) experience of the offeror and of the offeror's reporters, and (3) minimum notice period and the offeror's service commitment.

In furtherance of the evaluation, offerors were required to submit evidence of their experience in performing similar services and, for each reporter the offeror intended to use, a biographical information sheet reflecting the individual's qualifications. The solicitation also specifically provided that the offeror must be regularly engaged in the reporting business and have adequate facilities, reporters, and equipment to enable the offeror to commence performance immediately upon award for multiple simultaneous proceedings. However, the provision also advised that these requirements would not disqualify an offeror solely because all the reporters the offeror planned to use to perform were not employees; the offeror, however, had to be able to commence performance immediately upon award using qualified reporters.

Award was to be made to the responsible offeror whose offer conforming to the solicitation was "most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation considered." Base and option year prices were both to be considered in determining the lowest priced offer. Contract performance was to begin on June 1, 1992.

After the RFP was amended to state that the services were to be provided to two presiding officials, best and final offers (BAFO) were requested. BAFOs were received from both the protester and Gorham. The contracting officer evaluated

¹The protester also maintains that the RFP contained various deficiencies, such as the failure to include the offer of free transcript service as an evaluation factor. Protests of apparent solicitation improprieties must be filed prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1992). Since these issues were not raised until after the closing time, these grounds of protests are dismissed as untimely.

the BAFOs and concluded that both offerors met the requirements of the RFP and had submitted biographical sketches for at least two reporters that met the RFP requirements. The protester proposed four reporters (one of whom failed to meet the minimum experience requirement of the RFP). Gorham proposed two reporters and committed to hiring another qualified reporter whenever needed "due to illness et cetera." Gorham's BAFO stated that the second reporter proposed was on maternity leave and would not be available until September 1. The contracting officer determined that Gorham's proposed reporters were qualified, and concluded that the one reporter's maternity leave unavailability for the first 2 months of the base year was not significant in light of Gorham's commitment to hire another qualified reporter from the area whenever necessary.

The contracting officer then concluded that both offerors' proposals were substantially equal under the technical factors of experience, service commitment and minimum notice period and, on June 16, awarded to Gorham as the low priced responsible offeror. The protester filed this protest with our Office on June 29.

The protester argues that Gorham's proposal was unacceptable because her proposal showed that one of her reporters would be on maternity leave for the first 2 months of the contract. The protester argues that this information showed that Gorham would be unable to "commence [work] upon award" since Gorham did not submit a biographical sketch for a substitute reporter.

We disagree. The RFP required a showing that the offeror could start work immediately upon award by furnishing two different reporters to cover simultaneous proceedings presided over by two different judges. There was no firm requirement that the awardee actually provide two reporters--the awardee was required only to be prepared to do so if that was necessary. Gorham's proposal identified two reporters and indicated that one would not be available immediately. However, the proposal also indicated that a qualified substitute would be provided when that was necessary. Although the protester asserts that the RFP required proposals to include a biographical sketch of anyone who would be used at the outset of the contract, that is not the case.

The sketches were required so that the agency could evaluate the qualifications of the reporters the offerors proposed to furnish as part of the overall evaluation of proposals. There was no RFP requirement that sketches be provided for everyone who might work as a reporter under the contract or

that the awardee use only those reporters for whom sketches were furnished. In effect, the biographical sketches were to indicate the experience/qualification level that reporters furnished by the offeror would meet, rather than precisely whom would be furnished as a reporter. See generally Robocom Sys., Inc., B-244974, Dec. 4, 1991, 91-2 CPD ¶ 513. Accordingly, the fact that Gorham did not identify a specific individual who would, if necessary, serve as the second reporter does not mean that Gorham's proposal indicated her inability to commence work immediately. The proposal indicated only that, if called upon to provide the second reporter during the first 2 months of the contract, she would furnish someone whose experience and qualifications were substantially similar to the reporter whose sketch was furnished.

To the extent the protester questions Gorham's ability to meet the RFP requirement to commence performance with qualified reporters, this issue concerns not the acceptability of Gorham's proposal but Gorham's responsibility as a prospective contractor. The agency found Gorham responsible and we will not review an affirmative determination of responsibility except in circumstances not present here. See Standard Mfg. Co., Inc., B-236814, Jan. 4, 1990, 90-1 CPD ¶ 14.

The protester also argues that the evaluation of offers was defective because the agency failed to take into consideration letters of recommendation submitted on its behalf and instead awarded solely on the basis of price.

As stated above, offerors were to be evaluated on the basis of (1) price, (2) experience of the offeror and offeror's reporters, and (3) minimum notice period and service commitment. The RFP specifically stated that the names and addresses of current and former clients must be provided within 72 hours if the contracting officer determined that such information was necessary for evaluation purposes. Here, the contracting officer reviewed the offers and concluded that each met the minimum requirements of the solicitation. The contracting officer, within her discretion, concluded that she had sufficient information to evaluate the offers in accordance with the stated evaluation factors and that it was not necessary to obtain and use information from references. While the protester disagrees

with that decision, the decision was consistent with the solicitation provisions and is not otherwise legally objectionable.

The protest is denied.

for *Ronald Berger*
James F. Hinchman
General Counsel